

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No. 30084

STATE OF IDAHO,	)	
	)	Boise, April 2004 Term
Plaintiff-Respondent,	)	
	)	2004 Opinion No. 91
v.	)	
	)	Filed: October 28, 2004
RICHARD W. HOYLE	)	
	)	Frederick C. Lyon, Clerk
Defendant-Appellant.	)	
	)	
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. George D. Carey, District Judge.

The judgment of the district court is affirmed.

Andrew Parnes, Ketchum, and Peterson Law Offices, Boise, for appellant.  
Andrew Parnes argued.

Hon. Lawrence G. Wasden, Idaho Attorney General, Boise, for Respondent.  
Kenneth K. Jorgensen argued.

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**ON PETITION FOR REHEARING**

A Petition for Rehearing of this opinion was filed on August 9, 2004. After due consideration, the Petition for Rehearing is DENIED.

Justice EISMANN dissenting from the denial of the petition for rehearing.

The crux of this case is the proper construction of the jury's verdict. If the jury verdict is a "not guilty" verdict on racketeering, then Hoyle cannot be retried. Although the jury marked "not guilty" to the racketeering charge, it added, "Except as to the seven predicate acts upon which we could not reach unanimous agreement." The issue is whether such notation transformed a "not guilty" verdict into a hung jury.

The applicable standard under both our State and Federal Constitutions for construing the verdict has been well established for decades. If the verdict might have been based upon a factual determination favorable to Hoyle, it is a “not guilty” verdict. *State v. Lewis*, 96 Idaho 743, 536 P.2d 743 (1975); *United States v. Jenkins*, 420 U.S. 358 (1975).

The district court construed the verdict as stating that the jury was hung on the racketeering charge. When doing so, it neither mentioned nor alluded to the applicable constitutional standard for construing the verdict. The majority here has made the conclusory statement, unsupported by reasoning or authority, that the jury did not return a unanimous verdict on the racketing charge. Like the district court, the majority has neither mentioned nor applied the applicable constitutional standard for construing the verdict. Although the district court may have been unaware of that standard, the majority has no such excuse. It has simply chosen to ignore it.

Application of the constitutional standard for construing the jury verdict in this case would require that it be construed as a not guilty verdict, thereby changing the outcome of Hoyle’s appeal.<sup>1</sup> Hoyle, like all other criminal defendants, is entitled to the protection of the safeguards engrafted into our State and Federal Constitutions. Indeed, the majority offers no explanation for its refusal to apply the applicable constitutional standard in this case. If constitutional protections can simply be ignored in particular cases, then we have abandoned the rule of law upon which our nation was founded.

Justice BURDICK concurs in the dissent.

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<sup>1</sup> In order for Hoyle to be guilty of racketeering, the State had to prove all of the elements of the crime, including that he engaged in a “pattern of racketeering activity.” There was evidence that during the five-year period covered by the indictment, his insurance business had approximately 1.25 million transactions with gross receipts of about \$60 million. The jury could have concluded that although it could not agree with respect to the seven predicate acts, it did agree that the State had failed to prove that such acts, even if true, were part of a pattern of racketeering activity.